

United States
Circuit Court of Appeals

For the Ninth Circuit.

DAN LOTT,

Plaintiff in Error,

VS.

UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of
the Territory of Alaska, Division No. 1.

FILED

DEC 23 1912

United States
Circuit Court of Appeals

For the Ninth Circuit.

DAN LOTT,

Plaintiff in Error,

VS.

UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of
the Territory of Alaska, Division No. 1.

INDEX TO PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Assignment of Errors.....	24
Attorneys of Record, Names and Addresses of..	1
Certificate of Clerk U. S. District Court to Rec- ord, etc.....	28
Citation	27
Commitment.....	5
Complaint for the Crime of Inciting Another to Commit a Crime.....	2
Demurrer	12
Judgment and Sentence.....	19
Motion to Set Aside Verdict, for a New Trial, and for Arrest of Judgment.....	17
Names and Addresses of Attorneys of Record..	1
Notice of Appeal from Commissioner's Court..	10
Order Allowing Writ of Error, etc.....	21
Order Overruling Demurrer.....	13
Order Overruling Motion for a New Trial, etc..	18
Petition for Writ of Error.....	20
Praecipe for Record.....	1
Special Venire.....	7
Statement of Proceedings in Commissioner's Court.....	10

Index.	Page
Subpoena.....	4
Trial.....	13
Trial Continued.....	15
Undertaking for Bail.....	22
Verdict in Commissioner's Court.....	9
Verdict in U. S. District Court.....	16
Warrant.....	6
Writ of Error.....	25

Names and Addresses of Attorneys of Record.

JOHN RUSTGARD, United States Attorney, Residing at Juneau, Alaska,

Counsel for Plaintiff and Defendant in Error.

KAZIS KRAUCZUNAS, Attorney, Residing at Ketchikan, Alaska,

Counsel for Defendant and Plaintiff in Error.

In U. S. District Court in and for the District of Alaska, Division No. One, at Ketchikan.

No. —.

THE UNITED STATES OF AMERICA,

Plaintiff and Defendant in Error,

vs.

DAN LOTT,

Defendant and Plaintiff in Error.

Praeceptum for Record.

To the Clerk of said Court:

You are hereby respectfully requested to include in your return herein to the Circuit Court of Appeals in and for the 9th Circuit, with the original writ of error herein, a certified copy of the transcript on appeal from commissioner's court, the complaint and the entries in the minutes as to the arraignment of defendant, his plea, the demurrer, judgment on demurrer, the impaneling of the jury, all the proceedings of the trial, as in the minutes recorded, including the verdict, motion for a new trial and order overruling same, and the judgment of conviction and sentence, also copies of the cost bond, on writ of

4 *Dan Lott vs. United States of America.*

[Subpoena.]

United States Commissioner's Court, for the District of Alaska, at Ketchikan.

United States,

District of Alaska,—ss.

The President of the United States of America to
C. Ford and John Erickson, Greeting:

You are hereby commanded to appear before the Commissioner's Court of the United States, for the District of Alaska, at Ketchikan, in said District, on Tuesday, the 12 day of Dec., A. D. 1911, at 10 o'clock A. M. of that day, to testify on behalf of United States vs. Dan Lott.

HEREOF FAIL NOT.

WITNESS my hand and seal this 11 day of Dec.,
A. D. 1911.

[Seal]

E. S. STACKPOLE,
United States Commissioner.

United States,

District of Alaska,—ss.

I certify that I received the within subpoena on the 11 day of Dec., 1911, and served the same on the 11 day of Dec., 1911, by reading and showing the original, and delivering a ticket containing its substance to the within named C. Ford and John Erickson, personally.

H. L. FAULKNER,
U. S. Marshal.

By J. H. Davies,
Office Deputy U. S. Marshal.

[Endorsed]: No. ——. In the United States Commissioner's Court for the District of Alaska, at

Ketchikan. In the United States vs. Dan Lott. [5]
Subpoena. Returned and filed the 11 day of Decem-
ber, 1911. E. S. Stackpole, U. S. Commissioner. [6]

*United States Commissioner's Court for the District
of Alaska, First Division, Precinct of Ketchikan.*

THE UNITED STATES,

vs.

DAN LOTT,

Defendant.

Commitment.

Inciting Another to Commit Crime.

IN THE NAME OF THE UNITED STATES OF
AMERICA.

To the United States Marshal or Any Deputy:

An order having this day been made by me that
Dan Lott be committed for trial in a criminal action
for the crime of inciting another to commit crime,
you are hereby commanded to receive him into your
custody, and detain him accordingly, or until he is
otherwise legally discharged.

Dated at Ketchikan, District of Alaska, this 9 day
of Dec., A. D. 1911.

[Seal]

E. S. STACKPOLE,

United States Commissioner and Ex-officio Justice of
the Peace, Residing at Ketchikan.

United States of America,

District of Alaska,

Division No. 1,—ss.

I hereby certify that I received the within Com-
mitment on the 9 day of Dec., 1911, and executed the

same on the 9 day of Dec., 1911, by delivering the within named defendant to the jailer at the U. S. jail at Ketchikan, Alaska.

H. L. FAULKNER,
U. S. Marshal.

By J. H. Davies,
Office Deputy U. S. Marshal.

[Endorsed]: No. ——. In the United States Commissioner's Court for the District of Alaska, First Division, at Ketchikan. The United States [7] vs. Dan Lott. Commitment. Returned and filed the — day of ———, 190—. ———, U. S. Commissioner and Ex-officio Justice of the Peace. [8]

Warrant.

IN THE NAME OF THE UNITED STATES OF
AMERICA.

To the United States Marshal of the District of
Alaska, or His Deputy, Greeting:

Information on oath having been this day laid before me that the crime of inciting another to commit a crime has been committed, and accusing Dan Lott thereof, you are therefore commanded, forthwith, to arrest the above-named Dan Lott and bring him before me at Ketchikan, Alaska, or in case of my inability to act, before the nearest and most accessible Magistrate.

Dated at Ketchikan, Alaska, this 9th day of
December, 1911.

[Seal]

E. S. STACKPOLE,
United States Commissioner.

United States of America,
District of Alaska,—ss.

I, H. L. Faulkner, certify that the within warrant came into my hands on the 9 day of Dec., 1911, and that I executed the same on the 9 day of Dec., 1911, by taking the within named Dan Lott into my custody and now produce him in court this 9th day of Dec., 1911.

H. L. FAULKNER,
U. S. Marshal.
By J. H. Davies,
Deputy U. S. Marshal.

[Endorsed]: No. ——. In the U. S. Commissioner's Court for the District of Alaska, at Ketchikan. In the United States vs. Dan Lott. Warrant. Returned and filed the 9 day of December, 1911. E. S. Stackpole, U. S. Commissioner and Ex-officio Justice of the Peace. [9]

The United States of America,
District of Alaska,
Division No. 1,—ss.

*In the Commissioner's Court for the District of
Alaska, Division No. 1.*

No. ——.

UNITED STATES,
vs.
DAN LOTT.

Special Venire.

To the United States Marshal Within and for the
District of Alaska, Division No. 1, or to Any of
His Deputies, Greeting:

AND HEREOF FAIL NOT.

[S02] F. S. STACKPOLE

[Seal] E. S. STACKHOUSE,
Commissioner and Ex officio Justice of the Peace

I hereby certify that I received the within Special

Venire at 4 o'clock on the 11 day of December, 1911.

and served the same in the Division aforesaid on the

12 day of December, 1911, by summoning the follow-

ing named persons in accordance therewith: [10]

S. L. Myers. J. B. VanSice. D. H. Delzelle.

George Morrison. C. M. Taylor. Chester Smith.

Osborn Williams. John Raber. W. L. Polson.

Charles Deppe. J. H. Wall. F. S. Burkhart Ex.

G. F. Rounsefell.

Dated Ketchikan, Alaska, December 12, 1911.

H. L. FAULKNER,

U. S. Marshal.

By J. H. Davies,

Office Deputy.

[Endorsed]: In the Commissioner's Court for the District of Alaska, Division Number 1. No. ——. United States vs. Dan Lott. Special Venire. Returned and filed Dec. 12, 1911. E. S. Stackpole, Commissioner.

United States of America.

District of Alaska.

*In the Commissioner's Court of the United States
for the District of Alaska, Division Number
One, Ketchikan, Alaska.*

December, 12th, 1911—Term, 19—.

THE UNITED STATES OF AMERICA,

vs.

DAN LOTT.

Verdict [in Commissioner's Court].

We, the jury empaneled and sworn in the above-entitled cause, find the defendant guilty as charged in the complaint.

GEO. F. ROUNSEFELL,

Foreman.

[Endorsed]: No. ——. In the United States of America vs. Dan Lott. Verdict. Returned and filed Dec. 12, 1911. E. S. Stackpole, Commissioner.
[11]

In the Commissioner's Court at Ketchikan, Alaska.

UNITED STATES OF AMERICA

vs.

DAN LOTT.

Notice of Appeal [From Commissioner's Court].

To R. V. Nye, Assistant U. S. Attorney.

Sir: You are hereby notified that the defendant in the above-entitled cause will appeal from the judgement of the Court given herein on the 13th day of December, 1911.

Respectfully,

KAZIS KRAUCZUNAS,

Attorney for the Defendant.

Dated at Ketchikan, Alaska, December 13, 1911.

Service of copy of above notice admitted this 13th day of December, 1911.

ROY V. NYE,

Asst. U. S. Atty.

[Endorsed]: United States vs. Dan Lott. Notice of Appeal. [12]

[Statement of Proceedings in Commissioner's Court].

In the United States Commissioner's Court for the District of Alaska, Division No. 1, Precinct of Ketchikan.

UNITED STATES

vs.

DAN LOTT.

“Inciting Another to Commit Crime.”

On Dec. 9th, 1911, complaint sworn to by C. Ford, warrant issued duly returned, defendant duly arraigned and refused to plead, and was committed for trial.

On Dec. 11, 1911, comes now K. Krauczunas, attor-

ney for deft. and demands trial by jury; cause continued to Dec. 12, 1911; venire and subpoena issued.

On Dec. 12th, 1911, cause came on regularly for trial, present defendant with his attorney, R. V. Nye, Asst. United States Attorney. The following named citizens were accepted as jurors, to wit: S. L. Myers, Geo. Morrison, Osborn Williams, Chas. Deppe, J. B. Van Sise, C. M. Taylor, John Raber, J. W. Wall, D. H. Dalzelle, W. L. Polsen, Ed Grothjan and G. F. Rounsfell. The following witness sworn and examined on the part of the United States: C. Ford, John Erickson, F. E. Hagler, J. H. Davies and H. M. Stackpole. Argument by counsel and case submitted to the jury, who returned unanimous verdict of "Guilty." Judgment, Deft. fined \$50 and cost.

On Dec. 13, 1911, attorney for defendant served notice of appeal on R. V. Nye, Asst. U. S. Atty. Original, with proof of service on file herein. Undertaking on appeal given, with Geo. F. Rounsfell and J. F. Capp, as surities; proceedings not stayed thereby.

Bail bond in the sum of \$100 furnished, with Geo. Rounsfell and N. F. Zimmerman surities. Deft. released. Proceedings stayed.

[Seal]

E. S. STACKPOLE,

Commissioner. [13]

United States of America,
District of Alaska,—ss.

I hereby certify that the foregoing is a true statement of the proceedings had in the above-entitled matter.

E. S. STACKPOLE,

Commissioner.

[Endorsed]: No. 264-K. B. In the District Court of the United States for the District of Alaska, Div. No. 1. United States vs. Dan Lott. Transcript. Filed December 15, 1911. E. W. Pettit, Clerk. By E. S. Stackpole, Deputy. [14]

*In the District Court for the District of Alaska,
Division No. 1, at Ketchikan, Alaska.*

264-K. B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAN LOTT,

Defendant.

Demurrer.

Comes now the above-named defendant, Dan Lott, by his attorney, Kazis Krauczunas, and demurs to the complaint on file herein, and for cause of demurrer states:

That said complaint does not state facts sufficient to constitute a crime as against this defendant or any crime whatsoever; that the facts stated in said complaint do not constitute a crime of any name, nature, or kind under the laws of the District of Alaska, as against this defendant.

KAZIS KRAUCZUNAS,

Attorney for Defendant.

[Endorsed]: Filed May 9, 1912. E. W. Pettit, Clerk. By H. Malone, Deputy. [15]

*In the District Court for the District of Alaska,
Division Number One, at Ketchikan.*

No. 264—K. B.

UNITED STATES

vs.

DAN LOTT.

Order Overruling Demurrer.

On this day this matter coming on regularly for hearing upon the demurrer of defendant to the complaint herein, Assistant United States Attorney R. V. Nye appearing for the Government and Kazis Krauczunas, Esquire, appearing for defendant; and after argument by respective counsel and the Court being fully advised in the premises, said demurrer is by the Court overruled; to which ruling defendant is allowed an exception.

Dated Thursday, May 9, 1912.

THOMAS R. LYONS,

Judge. [16]

*In the District Court for the District of Alaska.
Division Number One, at Ketchikan.*

No. 264—K. B.

UNITED STATES

vs.

DAN LOTT.

Trial.

Now on this day this cause comes on regularly for trial on an appeal from the Commissioner's Court

Assistant United States Attorney H. H. Folsom appearing for the Government, and the defendant being present in court, in person and represented by his attorney, Kazis Krauczunas, Esquire; and both parties announcing their readiness for trial, the following proceedings are had, to wit:

George Sickle, Fred Barthold, K. J. Johanson,
A. E. Walker, Edward Brown, Fred G. Gardner
are selected and sworn as jurors to try the issues in this cause. And it appearing that the regular panel of petit jurors is exhausted and the trial panel is incomplete, it is ordered that the Clerk issue a special venire, addressed to the United States Marshal and returnable at two o'clock P. M. to-day, to summon from the body of the District, and not from the bystanders, ten (10) men qualified as jurors to complete the panel herein.

Thereafter said Marshal returning said venire into Court the following persons, to wit:

George Stevens, John Schoenbar, J. T. Jones, Jr.,
C. C. Babbage, E. E. Morgan, D. G. Newell,
are selected as jurors; and the trial panel being complete and being accepted by both parties hereto, the jury is duly sworn to try the issues in this cause.

Whereupon the rule is invoked and all witnesses are excluded from the courtroom while not testifying, and after statements by respective counsel to the jury, the following named witnesses, [17] to wit: C. Ford, John Erickson, Wm. H. Lewis and E. Ludecker, are duly sworn and testify for and on behalf of the Government, and the Government rests its case.

Thereupon Richard Bushell, Jr., M. A. Mitchell and Dan Lott, the defendant herein, are duly sworn and testify for the defense, and defendant rests his case.

Whereupon the further trial of this cause is continued to ten o'clock A. M. to-morrow, and the jury herein is excused until said day and hour.

Dated Monday, May 13, 1912.

THOMAS R. LYONS,
Judge. [18]

In the District Court for the District of Alaska, Division Number One, at Ketchikan.

No. 264—K. B.

UNITED STATES

vs.

DAN LOTT.

Trial Continued.

Now, on this day, the trial of this cause comes on again regularly for trial; comes the United States Attorney and comes likewise the defendant into court, being present in person and being represented by his attorney, Kazis Krauczunas, Esquire; come likewise the jury heretofore impaneled and sworn herein, and the said jury being called and each answering to his name, the following proceedings are had, to wit:

Whereupon defendant is recalled and further testifies in his own behalf; thereupon F. J. Hunt is duly sworn and testifies as a witness for the defendant, and the defense rests.

Thereupon S. Ford is recalled and testifies for the Government in rebuttal, and the prosecution rests.

And after argument by counsel for the plaintiff and counsel for the defendant, the jury being duly instructed by the Court as to the law in the premises, retire in charge of their sworn bailiff for deliberation. And thereafter the jury, returning into court in charge of their sworn bailiff, and being called and each answering to his name, present through their foreman their verdict, which is in words and figures as follows, to wit:

“United States of America,
District of Alaska.

*In the District Court of the United States for the
District of Alaska, Division Number One.*

[19]

SPECIAL KETCHIKAN MAY TERM, 1912.
THE UNITED STATES OF AMERICA

vs.

DAN LOTT,

Defendant.

Verdict [in U. S. District Court].

We, the jury empaneled and sworn in the above-entitled cause, find the defendant guilty as charged in the complaint.

D. G. NEWELL,

Foreman.”

And said verdict is ordered filed and entered by the Clerk, all special veniremen are excused for the term and the regular panel of petit jurors is excused

until 2 o'clock P. M. to-day.

Dated Tuesday, May 14, 1912.

THOMAS R. LYONS,

Judge. [20]

[**Motion to Set Aside Verdict, for a New Trial and
for Arrest of Judgment.**]

*In the United States District Court for the District
of Alaska, Division No. 1, at Ketchikan, Alaska.*

264-K. B.

THE UNITED STATES OF AMERICA

vs.

DAN LOTT.

Comes now the defendant above named and moves the Court that the verdict rendered and entered herein on the 14th day of May, 1912, be set aside and a new trial granted herein, and also moves for arrest of judgment for the following causes materially affecting the rights of said defendant, to wit:

1. Irregularities in the proceedings of the prosecution and the Court: The trial Court erred by not instructing the jury to disregard the statement of the prosecuting attorney to the jury in his opening statement that the defendant had been tried and convicted for the same crime in the commissioner's court, and in substance, that this trial was an appeal from said verdict, to which objection was taken at the time by the defendant, and the Court stating at the time that the jury would be instructed on that point, which the Court failed to do and which undoubtedly effected the trial jury and caused the verdict of guilty to be rendered.

2. Insufficiency of evidence to justify the verdict and that it is against the law as follows:

(a) As to the evidence: The evidence failed to show that the defendant solicited or incited the complaining witness to commit the crime of *purchasing* liquor to an Indian. [21]

(b) As to the law: The fact having been established by the evidence that there was interposed between the alleged solicitation on the part of the defendant the proposed sale of intoxicating liquor by the complaining witness, the resisting will of the latter, who testified not only not having had any intention of purchasing the liquor, but by deceit obtained 75 cents from the defendant, by urging said defendant to give the complaining witness 75 cents for the sole purpose of reporting the alleged violation to the United States marshall. That said complaining witness had no intention whatsoever to procure the liquor.

Dated May 15, 1912.

KAZIS KRAUCZUNAS,

Attorney for Defendant.

Ketchikan, Alaska.

[Endorsed]: Filed 10 A. M. May 15, 1912. E. W. Pettit, Clerk. [22]

In the District Court for the District of Alaska, Division Number One, at Ketchikan.

No. 264-K. B.

UNITED STATES

vs.

DAN LOTT.

Order [Overruling Motion for a New Trial, etc.].

Now, on this day, this cause coming on for hearing upon the motion of defendant for a new trial, the plaintiff being represented by Assistant United States Attorney H. H. Folsom, and the defendant being represented by Kazis Krauczunas, Esquire, after argument by counsel, and the Court being fully advised in the premises, it is ordered that said motion be, and the same is, hereby overruled; to which ruling of the Court an exception is allowed. And the time for pronouncing judgment herein is fixed at ten o'clock A. M. to-morrow.

Dated Wednesday, May 15, 1912.

THOMAS R. LYONS,

Judge. [23]

*In the District Court for the District of Alaska,
Division Number One, at Ketchikan.*

No. 264-K. B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAN LOTT,

Defendant.

Judgment and Sentence.

Comes now H. H. Folsom, Assistant United States Attorney; comes also the defendant in person and represented by his counsel, Kazis Krauczunas, Esquire; and the defendant having on a former day of this term been by a jury convicted of the crime of

“soliciting and inciting another to commit the crime of furnishing liquor to an Indian,” as charged in the complaint; and this being the time set for sentence, defendant is asked by the Court if he has anything to say why the judgment and sentence of the Court should not now be pronounced against him, and giving no legal excuse in that behalf;

It is now, therefore, the JUDGMENT and SENTENCE of the Court that you, Dan Lott, pay a fine of Seventy-five Dollars (\$75.00), without costs, and that you be committed to the custody of the United States Marshal until such fine is fully paid and discharged, at the rate of one (1) day for each Two Dollars (\$2.00) of said fine.

Done in open court this 16th day of May, 1912.

THOMAS R. LYONS,

District Judge.

[Endorsed]: Entered Court Journal No. L. L. 3, page 93-94. Filed May 16, 1912. E. W. Pettit, Clerk. By H. Malone, Deputy. [24]

*In the United States District Court in and for the
District of Alaska, Division No. 1, at Ketchikan,
Alaska.*

No. 264-K. B.

AT LAW.

DAN LOTT,

Plaintiff,

against

UNITED STATES OF AMERICA,

Defendant.

Petition for Writ of Error.

Comes now the plaintiff, Dan Lott, and says that on the 16th day of May, 1912, judgment in this case was entered by this Court in favor of the defendant and against this plaintiff, by which said judgment plaintiff was aggrieved, in that in said judgment and the proceedings had prior thereunto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will appear more in detail from the assignment of errors filed with this petition. Wherefore, plaintiff prays that a writ of error may issue to the United States Circuit Court of Appeals for the Ninth Circuit for the correction of the errors complained of, and that a duly authenticated transcript of the record, proceedings and papers herein may be sent to said Circuit Court of Appeals.

KAZIS KRAUCZUNAS,

Attorney for Plaintiff.

Dated 17th day of May, 1912.

[Endorsed]: Filed May 17, 1912. E. W. Pettit,
Clerk. [25]

[Order Allowing Writ of Error, etc.]

*In the United States District Court in and for the
District of Alaska, Division No. 1, at Ketchikan,
Alaska.*

No. 264—K. B.

UNITED STATES OF AMERICA

vs.

DAN LOTT.

Order allowing writ of error upon motion of Kazis Krauczunas, attorney for the defendant, and upon

filing of petition for writ of error and assignment of errors, it is ordered that a writ of error. be and hereby is allowed to be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit. The proceedings, verdict and judgment heretofore entered and had herein in accordance with the laws in such cases made and provided and the practice of the Court.

Done in open court this 17th day of May, 1912.

THOMAS R. LYONS,
Judge.

[Endorsed]: Entered Court Journal No. L. L. 3, page 96. Filed May 17, 1912. E. W. Pettit, Clerk.
[26]

In the Commissioner's Court at Ketchikan, Alaska.

UNITED STATES OF AMERICA

vs.

DAN LOTT.

Undertaking for Bail.

A judgment having been given on the 16th day of May, 1912, whereby Dan Lott was condemned to pay the sum of Seventy-five Dollars (\$75.00), and he having appealed from said judgment and been duly admitted to bail in the sum of Two Hundred & Fifty (\$250.00) Dollars,—

We, Domianus Maskevicius, of Ketchikan, Alaska, and N. F. Zimmerman, of the same place, hereby undertake that the above-named Dan Lott shall in all respects abide and perform the orders and judgments of the Appellate Court upon the ap-

peal, or if he fail to do so in any particular, that we will pay to the United States the sum of Two Hundred & Fifty (\$250.00) Dollars.

D. MASKEVICZIUS. [Seal]

N. F. ZIMMERMAN. [Seal]

United States of America,
District of Alaska,
First Division,—ss.

Domianus Maskeviczius and N. F. Zimmerman, being first duly sworn, each for himself deposes and says: That he is a resident within the District of Alaska, that he is not a counsellor or attorney, marshal, clerk of any court, or other officer of any court, and that he is worth the sum of Two Hundred & Fifty (\$250.00) Dollars, exclusive of property exempt from execution, and over and above all just debts and liabilities.

D. MASKEVICZIUS.

N. F. ZIMMERMAN.

Subscribed and sworn to before me this 17th day of December, 1912.

[Notarial Seal] KAZIS KRAUCZUNAS,
Notary Public. [27]

The above bond is hereby approved this 17th day of May, 1912.

THOMAS R. LYONS,
Judge.

[Endorsed]: 264—K. B. In the District Court for the District of Alaska, Div. No. One, at Ketchikan. United States vs. Dan Lott. Bond on Appeal. Filed May 17, 1912. E. W. Pettit, Clerk. [28]

*United States District Court in and for the District
of Alaska, Division No. 1, at Ketchikan, Alaska.*

No. 264-K. B.

DAN LOTT

vs.

THE UNITED STATES OF AMERICA.

Assignment of Errors.

Comes now the above-named defendant, by Kazis Krauczunas, his attorney, and says that in the record and proceedings in said United States District Court, in the above-entitled action, and also in the giving of judgment in said action, there is manifest error in this, to wit:

In overruling the defendant's demurrer made in due time, for the reason that the facts stated in said indictment or complaint did not constitute a crime in this:

1. That section 218, Alaska Criminal Code, Part 1, does not create common-law crimes. That the common law of England does not apply to Alaska in so far as to create common-law crimes not expressly designated by law.

2. That solicitation by an Indian to purchase intoxicating liquor does not constitute a crime under any law.

By reason of and for errors of law occurring in the trial and duly excepted to by the defendant, which said alleged errors are the same specified in assignments 1 and 2, to which the defendant's council duly excepted, and the defendant prays that the judg-

ment as aforesaid as rendered against him in said court for the errors aforesaid may be reversed, cancelled, and altogether held for naught, and that more especially the judgment of conviction and sentence of the defendant to \$75.00 fine may be reversed, cancelled, and altogether held for naught, and that said defendant [29] be restored to all things which he has lost by occasion of said judgment.

KAZIS KRAUCZUNAS,

Attorney for Defendant,

Ketchikan, Alaska.

Dated 16th day of May, 1912.

[Endorsed]: Filed May 17, 1912. E. W. Pettit,
Clerk. By H. Malone, Deputy. [30]

Writ of Error.

THE UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to
the Honorable Judge of the U. S. District Court
in and for the District of Alaska, Division No.
One, Greeting:

WHEREAS in the record and proceedings and also in the rendition of the judgment of a plea in that certain prosecution which is in said court before you, at the special May, 1912, term thereof, between the United States of America, as plaintiff below and now defendant in error, and Dan Lott, as defendant below and now plaintiff in error, a manifest error hath happened to the great damage of said Dan Lott, as by his complaint appears.

We, being willing that error, if any hath been,

should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then and under your seal, distinctly and openly, you send the record and proceeding aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the said record and proceedings aforesaid in the city of San Francisco, filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, on or before the 15th day of November, 1912, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein, to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable EDWARD D. WHITE Chief Justice of the Supreme Court of the United States, this 16th day of October, 1912.

Issued at my office in Ketchikan, Alaska, with the seal of the United States District Court, in and for the District of Alaska, [31] Division No. One, and dated as aforesaid.

[Seal]

E. W. PETTIT,

Clerk U. S. District Court in and for the District of Alaska, Division No. One.

By _____,
Deputy.

Allowed by

THOMAS R. LYONS,

Judge U. S. District Court, District of Alaska.

[Endorsed]: In the District Court of the United States for the District of Alaska, Division No. One, at Ketchikan. United States, Plaintiff and Defendant in Error, vs. Dan Lott, Defendant and Plaintiff in Error. Writ of Error. Filed Oct. 16, 1912. E. W. Pettit, Clerk. By ———, Deputy. [32]

*In U. S. District Court in and for the District of
Alaska, Division No. One, at Ketchikan.*

No. —.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

DAN LOTT,
Defendant.

Citation.

The President of the United States to the United States of America, and to JOHN RUSTGARD, U. S. Attorney for the District of Alaska, Division No. One, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, Cal., thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the U. S. District Court in and for the District of Alaska, Division No. One, at the town of Ketchikan, Alaska, wherein Dan Lott, defendant, is plaintiff in error, and you, the United States of America, are defendant in error, to show cause, if any there be, why the judgment rendered

against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

WITNESS the Honorable THOMAS R. LYONS, Judge of the U. S. District Court in and for the District of Alaska, Division No. One, this 16th day of October, A. D. 1912.

THOMAS R. LYONS,
Judge of U. S. District Court in and for the District
of Alaska, Division No. One.

Service of the within and foregoing citation is hereby [34] admitted this 16th day of October, A. D. 1912.

JOHN RUSTGARD,
U. S. District Attorney for the 1st Division of the
District of Alaska.

[Endorsed]: No. ——. In the District Court of the United States for the District of Alaska, Division No. One, at Ketchikan. United States, Plaintiff, vs. Dan Lott, Defendant. Citation. Filed Oct. 16, 1912. E. W. Pettit, Clerk. By ———, Deputy. [35]

*In the District Court for the Territory of Alaska,
Division Number One, at Ketchikan.*

No. 264—K. B.

UNITED STATES,

Plaintiff and Defendant in Error;

vs.

DAN LOTT,

Defendant and Plaintiff in Error.

**Certificate [of Clerk U. S. District Court to Record,
etc.].**

I, E. W. Pettit, Clerk of the District Court for the Territory of Alaska, Division Number One, do hereby certify that the foregoing and hereto attached thirty-six pages of typewritten matter, numbered from one to thirty-six, both inclusive, constitutes a full, true and correct copy, and the whole thereof, prepared in accordance with the praeceipe of the defendant and plaintiff in error, on file in my office and made a part hereof, in cause No. 264-K. B., of the above-entitled court, wherein United States is plaintiff and defendant in error and Dan Lott is defendant and plaintiff in error. I do further certify that the said record is by virtue of the Writ of Error and Citation issued in this cause, and the return thereof in accordance therewith.

I do further certify that this transcript was prepared by me in my office, and that the costs of preparation, examination and certificate, amounting to Twelve and 35/100 (\$12.35) Dollars, has been paid me by Kazis Krauczunas, attorney for Dan Lott, defendant and plaintiff in error.

In witness whereof, I have hereunto set my hand and affixed the seal of the above-entitled court this 26th day of October, 1912.

[Seal]

E. W. PETTIT,
Clerk of the District Court, for the Territory of
Alaska, Division No. One.

[Endorsed]: No. 2201. United States Circuit Court of Appeals for the Ninth Circuit. Dan Lott, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Territory of Alaska, Division No. 1.

Received November 6, 1912.

F. D. MONCKTON,
Clerk.

Filed November 15, 1912.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.